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JOSEPHINE ANNE FOO

v.

MESSRS JAYASURIYA KAH & CO

B HIGH COURT SABAH & SARAWAK, KOTA KINABALU
ABDUL RAHMAN SEBLI JC
[SUIT NO: K22-188-2009(II)]
15 JULY 2010

C ***CIVIL PROCEDURE:*** *Costs - Security for costs - Failure to furnish within stipulated time - Whether non-compliance intentional and contumelious - Whether plaintiff's right of appeal overrides non-compliance - Rules of the High Court 1980, O. 23 r. 1 (a), O. 56 r. 1*

D ***CIVIL PROCEDURE:*** *Appeal - Right of appeal - Appeal against Deputy Registrar's order - Whether right of appeal overrides non-compliance with Registrar's order within stipulated time - Rules of the High Court 1980, O. 23 r. 1 (a), O. 56 r. 1*

E This was the plaintiff's appeal against the order of the Deputy Registrar ('DR') who ordered the plaintiff to provide security for costs in the sum of RM30,000 pursuant to O. 23 r. 1(a) of the Rules of the High Court 1980 ('RHC'). Paragraph (2) of the DR's order stipulated that the plaintiff's failure to furnish the security of costs would render the plaintiff's suit be struck out. The plaintiff F failed to provide the said security within the stipulated time but argued that on the authority of *Horst Koch v. Michael Schaefer*, she should not be shut out from the proceedings with her vested right of appeal under O. 56 r. 1 RHC.

G **Held (dismissing the appeal):**

(1) The plaintiff failed to provide the security of RM30,000 within the stipulated time. Neither did she apply for and obtain a stay of the DR's order. Nor did she apply for an extension of time to comply with the DR's order. It was obvious that there was a H blatant disregard for the DR's order. (para 4)

(2) The case of *Horst Koch v. Michael Schaefer* was of no assistance to the plaintiff as in that case it was clear that the plaintiff had been granted an extended period to comply with the order I therein. Further, an order such as in para. (2) of the DR's order herein was not given in *Horst Koch*. The High Court decision in *Standard Chartered Bank (Thailand) v. Dato' Matshah*

Safuan was more on point where it was held that the plaintiff's non-compliance with the order therein rendered the plaintiff's conduct intentional and contumelious thereby warranting the action to be struck out. However, despite the plaintiff's non-compliance, the plaintiff could still persuade the court not to strike out the action on the authority of *Re Jokai Tea Holdings Ltd*. The legal burden was on the plaintiff to demonstrate that there was no intention to ignore or flout the order and that the failure to obey was due to extraneous circumstances. (paras 6-8)

(3) The plaintiff, apart from arguing that she had a vested right of appeal against the DR's decision, did not ask the court not to strike out the appeal. Further, no explanation for the non-compliance with the DR's order was given. The only conclusion that could be drawn from the present action was that the plaintiff's failure to comply with the DR's order was intentional. (para 9)

(4) Court orders are meant to be complied with and no party has a right to disregard them without any valid reason acceptable by the court. To allow any party to do so is to perpetuate anarchy in the system of justice. The right of appeal vested by O. 56 r. 1 of the RHC is not a license to ignore any other court order unless it could be shown that such an order had been rendered invalid or irrelevant for the purposes of the appeal. (para 10)

Case(s) referred to:
Horst Koch v. Michael Schaefer [1997] 4 CLJ Supp 500 HC ***(refd)***
Standard Chartered Bank (Thailand) v. Dato' Matshah Safuan [2005] 3 CLJ 158 HC ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 23 rr. 1(a), 2, O. 56 r. 1

For the plaintiff - Marcel Jude Joseph; M/s Marcel Jude Joseph (2000) & Co
For the defendant - Celestina Stuel Galid; M/s Jayasuriya Kah & Co

Reported by Usha Thiagarajah

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JUDGMENT

Abdul Rahman Sebli JC:

[1] On 29 March 2010 the Deputy Registrar ordered the plaintiff within 14 days from the date of the order to provide security for costs in the sum of RM30,000 pursuant to O. 23 r. 1(a) of the Rules of the High Court 1980 ("the Rules"). The present appeal is against that decision.

[2] Paragraph (2) of the Deputy Registrar's order is in the following terms:

> In the event the Plaintiff fails to comply with prayer (1) above, then automatically and without any further Order by this Honourable Court, **this Suit shall be struck out and/or deemed to be struck out**; (emphasis added)

[3] The order was validly made by the Deputy Registrar as he was empowered to do so by O. 23 r. 2 of the Rules which provides as follows:

> Where an order is made requiring any party to give security for costs, the security shall be given in such manner, at such time, and on such terms (if any), as the Court may direct.

[4] The plaintiff failed to provide the security of RM30,000 within the stipulated time. Neither did she apply for and obtain a stay of the said order. Nor did she apply for extension of time to comply with the order. It is obvious that there was a blatant disregard for the order.

[5] Learned counsel for the plaintiff admitted that there was non compliance with the Deputy Registrar's order but argued on the authority of *Horst Koch v. Michael Schaefer* [1997] 4 CLJ Supp 500 that the plaintiff cannot be shut out from proceeding with her vested right to appeal under O. 56 r. 1 of the Rules.

[6] In my view *Horst Koch* is of no assistance to the plaintiff as in that case it is clear that the plaintiff had been granted an extended period to comply with the order of the Senior Assistant Registrar. In any event an order in terms of para. (2) of the Deputy Registrar's order as in the present case does not appear to have been given in *Horst Koch*.

[7] The decision of the High Court in *Standard Chartered Bank (Thailand) v. Dato' Matshah Safuan* [2005] 3 CLJ 158 is more on point. In that case the plaintiff bank was ordered by the court to deposit a sum of RM30,000 as security for costs on or before 3 September 2001. It was a term of the order that if the plaintiff failed to deposit the sum within the prescribed time, the plaintiff's action would be struck out. The plaintiff failed to comply with the order within the prescribed time, which prompted the defendant to apply for the plaintiff's writ to be struck out. The defendant's application was however dismissed by the Senior Assistant Registrar. The defendant then appealed to the judge in chambers.

[8] In allowing the defendant's appeal Hishamudin Yunus J (as he then was) said at p. 162:

> In my judgment, in the case before me, once it is shown that the deposit was made outside the prescribed time, the conduct of the plaintiff is deemed *prima facie* intentional and contumelious and thus the action ought to be struck out. However, on the authority of *Re Jokai Tea Holdings Ltd,* notwithstanding the non-compliance, the plaintiff can still persuade the court not to strike out the action; but the legal burden is on the plaintiff to demonstrate that there was no intention to ignore or flout the order and that the failure to obey was due to extraneous circumstances.

[9] In the present case other than saying that the plaintiff has a vested right to appeal against the Deputy Registrar's decision, learned counsel for the plaintiff did not even bother to ask the court not to strike out the appeal, let alone to offer any explanation for the non compliance with the order of the Deputy Registrar. The only conclusion that can be drawn from this action is that the plaintiff's failure to comply with the Deputy Registrar's order was intentional.

[10] Court orders are meant to be complied and no party has a right to disregard them without any valid reason acceptable to the court. To allow any party to do so is to perpetuate anarchy in the system of justice. The right of appeal vested by O. 56 r. 1 of the Rules is not a license to ignore any other order of the court unless it can be shown that such other order has been rendered invalid or is irrelevant for purposes of the appeal.

[11] For reasons stated above I am of the view that the plaintiff's appeal was not properly before the court and ought to be struck out as the whole suit had been struck out by default.